Pac. 133. (2) The second theory is that the surety holds the securities in order to be sure of *exoneration* (and not merely *reimbursement*), and the best way to secure this is to let him assign the securities to the creditor, or to let the creditor himself collect by direct action. This theory is not generally adopted, but if it is sound it would apply in the present case. No fund was deposited by the defendant with the surety company, as a trust fund, nor was the defendant's promise made to the surety company as *trustee*. Nevertheless, if the defendant's promise to the surety company was to save it harmless, to exonerate and not merely to reimburse, then the performance of the promise involves a payment directly to the creditor. The creditor might well be regarded as a third-party beneficiary. Complete exoneration of the surety company requires full settlement with the creditor, the fact that the surety company is insolvent being immaterial in this respect. This would perhaps be otherwise if the surety company has been totally dissolved. See *Hasbrouck v. Carr, supra.* On this theory, the rights of both the surety company and the creditor will be fully vindicated by action in the creditor's name against the defendant, without reference to the complexities of subrogation. To this action the surety company should be made a party.

TORTS—INJURY CAUSED BY FRIGHT—DAMAGES.—The defendant's chimpanzee escaped, entered the plaintiff's house and attacked her children. The plaintiff drove the animal away but became hysterical and ill because of fear for her own and children's safety. She sued the owner of the animal for the injuries caused by the fright. *Held,* that the plaintiff could recover. *Lindley v. Knowlton* (1918, Cal.) 176 Pac. 140.

No recovery can be had for pure fear not resulting in bodily effects. *Chittick v. Phila. Rapid Transit Co.* (1909) 224 Pa. 13, 73 Atl. 4; *Reed v. Ford* (1908) 33 Ky. L. Rep. 1029, 112 S. W. 600, 19 L. R. A. (N. S.) 255. Nor where the fear is wholly for the safety of a third person. *Sanderson v. Northern Pacific Ry.* (1902) 88 Minn. 162, 92 N. W. 542. By the weight of authority, fear for one's self which is followed by bodily suffering is ground for the recovery of damages. *McGee v. Vanover* (1912) 148 Ky. 737, 147 S. W. 742; *Samarra v. Allegheny Valley St. Ry.* (1913) 238 Pa. 468, 86 Atl. 287; *Denver R. Co. v. Roller* (1900, C. C. A. 9th) 100 Fed. 738; *contra, Mitchell v. Rochester* (1896) 151 N. Y. 107, 45 N. E. 354. Also fear may be considered as an operative element and affect the amount of damages when it results either from or in physical suffering, or produces a visible injury to the nervous system. *Watson v. Augusta B. Co.* (1903) 124 Ga. 121, 1 L. R. A. (N. S.) 1178, 110 Am. St. 157; *Conley v. United Drug Co.* (1914) 218 Mass. 238, 105 N. E. 975. On remoteness of mental anguish as barring recovery, see (1916) 25 YALE LAW JOURNAL, 243; on mental suffering for desecration of the dead, see (1916) 28 *ibid.* 508, and CURRENT DECISIONS, *infra, sub tit.* TORTS.

TORTS—LABOR UNIONS—BANNERING AND STRIKE—"RIGHT TO WORK IN ONE'S OWN BUSINESS."—The constitution of the defendant union excluded all theatre owners. The plaintiff, a theatre owner, insisted upon operating his own moving picture machines part of the time, to save expense. To force him to employ union men to do this work the union men ceased to work for him and the defendant union published in the official labor paper that the plaintiff was "unfair," and caused a banner bearing that message to be paraded in front of the theatre. The plaintiff, whose business fell off in consequence, applied for an injunction *pendente lite.* It was refused and the plaintiff appealed. *Held,* that the desire to force the plaintiff to replace his own services in his own business with those of the defendant's members was not such a motive as justified the defendant's acts injuring the plaintiff's business; but that the

trial court had acted within its discretion in refusing the injunction *pendente lite*. *Roraback v. Motion Picture Operators' Union of Minneapolis* (1918) 144 Minn. 481, 168 N. W. 766.

A union is privileged to use lawful means to procure the discharge of a non-union worker when the sole motive is to secure the work for themselves. The discharged employee has no right of action against the union. *National Protective Assn. v. Cummings* (1902) 170 N. Y. 315, 63 N. E. 369; *Shinsky v. O'Neil* (1919, Mass.) 121 N. E. 790, discussed in (1919) 28 YALE LAW JOURNAL, 611. Nor has the employer any right that the union shall not take such action. *Steffes v. Motion Picture Machine Operators' Union* (1917) 136 Minn. 200, 161 N. W. 524; but see *Snow Iron Works v. Chadwick* (1917) 227 Mass. 382, 116 N. E. 801. But the principal case maintains that where the plaintiff plays the double role of workman and employer and is working in his own business, the union may not force him to desist. This doctrine may be sustained upon a ground which the court does not consider, viz., that inasmuch as the defendant will not allow him to become a member of their union, they should not be permitted to ruin his business because of his non-membership. *Lucke v. Clothing Cutters, etc.* (1893) 77 Md. 396, 26 Atl. 505. The majority opinion argues that the plaintiff's rights against the defendant arise from the Bill of Rights and the Fourteenth Amendment. These certainly confer an *immunity* upon all citizens, from certain interferences by state *governmental* agencies. But such immunity does not carry with it, as a logical necessity, *rights* in one citizen against *other individuals*. *Civil Rights Cases* (1883) 109 U. S. 3, 3 Sup. Ct. 18; see Cook, *Privileges of Labor Unions* (1918) 27 YALE LAW JOURNAL, 779, commenting on *Hitchman Coal and Coke Co. v. Mitchell* (1917) 245 U. S. 229, 38 Sup. Ct. 65, Ann. Cas. 1918B 461. It may well be that public policy at times requires the co-existence of such rights with the immunities in question, but the fact should be borne in mind that the requirement is not one of logic, but one of policy, to be determined in each case.

TRUSTS—MASSACHUSETTS BUSINESS TRUSTS NOT "ASSOCIATIONS" UNDER INCOME TAX ACT.—Certain mills and other property in Massachusetts were partly conveyed, partly leased, to a Massachusetts corporation. The reversion of the property leased was conveyed to trustees, who executed a declaration of trust: declaring that they held the reversion and all other property received under the trust for the benefit of the *cestuis* (who should be trust beneficiaries only, without partnership, association or other relation whatever *inter sese*) upon trust at the discretion of the trustees to convert the same into money and distribute the net proceeds to the then holders of the trustees' certificates, within twenty years after the death of specified persons. In the meantime the trustees were to have the powers of owners; they were in their discretion to distribute net income to the certificate holders or apply it to capital. The powers of the certificate holders were limited to consenting: to any increased remuneration of the trustees, to any filling of vacancies among the trustees, and to any modification of the terms of the trust. The trustees' receipt provided that the holder was to have no interest in any specific property. The stock of the lessee corporation was also left in the trustees' hands; but the trustees' function was not to manage the mills, but only to collect the rents and income. The income of this lessee corporation had been taxed in the hands of the corporation, but an additional tax was levied on the income from the shares held by the trustees, as on income of an "association" under the Income Tax Act of October 3, 1913, ch. 16, sec. II, G (a), 38 Stat. L. 114, 166, 172, taxing the income of "every corporation, joint-stock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships." The trustees brought suit